

**\*E-FILED 03-25-2011\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GEORGIA C. BROWN-KYES,

No. C10-01986 HRL

Plaintiff,

**ORDER THAT CASE BE REASSIGNED  
TO A DISTRICT COURT JUDGE**

v.

**REPORT AND RECOMMENDATION  
THAT CASE BE DISMISSED WITHOUT  
PREJUDICE FOR FAILURE TO  
PROSECUTE**

GREENPOINT MORTGAGE FUNDING, INC.;  
GMAC MORTGAGE, LLC; ALLAMERICAN  
MORTGAGE & PROPERTIES; MORTGAGE  
ELECTRONIC REGISTRATION SYSTEMS,  
INC.; ETS SERVICES, LLC; AURORA LOAN  
SERVICES; US BANK N.A. TRUSTEE; and  
DOES 1 to 100, inclusive,

Defendants.

Plaintiff Georgia Brown-Kyes was ordered to appear on December 14, 2010 and show cause why this case should not be dismissed for failure to prosecute. She failed to appear, and because not all parties have consented to proceed before a United States Magistrate Judge, this court now issues the following report and recommendation.

Plaintiff, who is represented by counsel, filed the instant action in state court for alleged violations of federal and state law in connection with her home mortgage. Defendant Aurora Loan Service (Aurora) removed the matter here, asserting federal question jurisdiction. At the time of removal, none of the defendants had been served. (Docket No. 1, Notice of Removal ¶ 7)). Shortly after, plaintiff voluntarily dismissed Aurora with prejudice. (Docket No. 8).

1 Plaintiff then filed an amended complaint against all the same defendants.<sup>1</sup> The docket contains  
2 no proofs of service. In her case management statement, however, plaintiff stated that as of  
3 August 3, 2010, all but one defendant (ETS Services, LLC) had been served. (Docket No. 11).  
4 Of the defendants who reportedly have been served, none have responded to the amended  
5 complaint or appeared in this action. A case management conference was held in this matter on  
6 September 28, 2010. Neither plaintiff nor her attorney appeared. Instead, a “special  
7 appearance” was made on plaintiff’s behalf by an attorney with no connection whatsoever to  
8 these proceedings.

9 No significant activity has occurred in the litigation since then.

10 Rule 41 of the Federal Rules of Civil Procedure provides that a plaintiff’s failure to  
11 prosecute may result in dismissal of the action. FED.R.CIV.P. 41(b). Although Rule 41, on its  
12 face, authorizes dismissal on a motion by a defendant, the court also has inherent power to  
13 dismiss actions *sua sponte*, without notice or hearing, “to achieve the orderly and expeditious  
14 disposition of cases.” *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630-32, 82 S. Ct. 1386  
15 (1962); *see also Oliva v. Sullivan*, 958 F.2d 272, 273 (9th Cir. 1992) (“District courts have  
16 inherent power to control their dockets and may impose sanctions, including dismissal, in the  
17 exercise of that discretion.”); *Villegas v. City of Gilroy*, 363 F. Supp.2d 1207, 1208, fn. 1 (N.D.  
18 Cal. 2005) (same). Federal actions must be prosecuted with “reasonable diligence” in order to  
19 avoid dismissal. *Anderson v. Air West, Inc.*, 542 F.2d 522, 524 (9th Cir. 1976). In determining  
20 whether such a dismissal is warranted, “the district court must consider five factors: (1) the  
21 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its  
22 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
23 cases on their merits; and (5) the availability of less drastic alternatives.” *Yourish v. California*  
24 *Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999).

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28 <sup>1</sup> In view of the prior dismissal of Aurora with prejudice, Aurora’s inclusion in  
the amended pleading apparently was an inadvertent error.

1 Analysis of the relevant factors weighs in favor of dismissal here. Indeed, all  
2 indications are that plaintiff has abandoned the instant litigation.<sup>2</sup> Accordingly, this court  
3 recommends that this action be dismissed without prejudice for failure to prosecute.

4 Any party may serve and file objections to this Report and Recommendation within  
5 fourteen days after being served. FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1)(B) & (C).

6 Dated: March 25, 2011

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9 HOWARD R. LLOYD  
10 UNITED STATES MAGISTRATE JUDGE  
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27 <sup>2</sup> While the instant proceedings were languishing, plaintiff apparently elected to  
28 file, on a pro se basis, a separate lawsuit against two of the named defendants: ETS Services  
and Mortgage Electronic Registration Systems, Inc., Case No. C10-05535 LHK (HRL). That  
lawsuit also concerns alleged predatory lending conduct with respect to the same real  
property.

5:10-cv-01986-HRL Notice has been electronically mailed to:

Donald Michael Scotten    donald.scotten@akerman.com, jordan.smith@akerman.com,  
maciej.wesolowski@akerman.com

Justin D. Balser    justin.balser@akerman.com

Justin Donald Balser    justin.balser@akerman.com, elizabeth.streible@akerman.com,  
kristine.elliott@akerman.com, luke.sosnicki@akerman.com,  
stephanie.jefferson@akerman.com, toni.domres@akerman.com,  
victoria.edwards@akerman.com

Stephen Conrad Ruehmann    ruehmannlaw@yahoo.com

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